

INDIVIDUAL RIGHTS

I. OVERVIEW

The Individual Rights program is the tenth of the eleven major programs in the program structure. The objective of this program is to ensure that the individual is provided with services and products meeting acceptable standards of quality, dependability and safety; is given equitable and responsive treatment by public agencies; and is afforded equal protection of legal and civil rights and interests.

The program elements within the Individual Rights program are aggregated into three Level II subprograms. One is directed at protection of the consumer from unfair business practices. The second is enforcement of information practices in State government. And the third is protection of the legal and civil rights of the individual. Beneath these three subprograms, there are 15 individual, lowest-level programs within the Individual Rights program.

The departments in the State government and number of active lowest-level programs under the overall Individual Rights program are: the Department of Agriculture (DOA) (1); Department of Commerce and Consumer Affairs (DCCA) (9); Department of Budget and Finance (B&F) (2); Department of Land and Natural Resources (DLNR) (1); Department of Human Services (DHS) (1); and Lieutenant Governor (LG) (1).

The activities within the Individual Rights program vary considerably between the three Level II subprograms. Major activities directed at the protection of the consumer include those of the DOA aimed at ensuring that wholesome meat and poultry products are sold to consumers and ensuring adherence to measurement, packaging and labeling standards. DCCA manages programs that advocate the consumer's interest in public utilities proceedings; regulate the financial, cable television and insurance industries; register and license various professions and vocations; undertake business registration; investigate and resolve consumer complaints of unfair business practices by regulated and non-regulated business establishments; and engage in consumer education programs. B&F manages a program that is charged with ensuring that regulated companies provide acceptable communication, utilities and transportation services to the public at just and reasonable rates by establishing and enforcing appropriate service standards.

Enforcement of information practices is the responsibility of the Office of Information Practices (OIP) which provides general advice and guidance to agencies and the public on the Uniform Information Practices Act (UIPA) and the Sunshine Law,

assists the public in obtaining government records, and conducts inquiries into an agency's compliance with the UIPA.

Programs directed toward the protection of legal and civil rights of the individual include the Office of the Public Defender under B&F, which provides legal assistance to indigents in need of legal aid in criminal cases. DLNR's Conveyances and Recording program provides a system of registering and recording land titles and related documents and maps. The activities of the Commission on the Status of Women, under DHS, are directed toward attainment of full civil rights of women.

Programs under the Individual Rights program maintain important working relationships with each other in pursuit of the overall program objective. They also maintain relationships with other agencies and jurisdictions on the federal and county levels which contribute to similar objectives. The Office of the Ombudsman, a State legislative program, and the Judiciary contribute toward the goals of the Individual Rights program but are not shown in the budget or in the program and financial plans submitted by the Executive Branch.

Factors influencing the overall direction of the Individual Rights program continue to be increasing consumer awareness of support that government agencies can provide to protect one's rights in a marketplace and increasing awareness that an individual's rights in society should not be conditioned by status of birth, age, sex, race, income, religion or any other discriminatory factor that may now exist. Both of these factors will result in constant demands placed on government agencies for remedial or protective action. On the other hand, there appears to be a continuing demand that government limit or curtail some of its regulatory activities, perhaps an awareness on the part of the public that the costs of government regulation over private enterprise may, at times, outweigh the benefits derived or anticipated.

The figures in Table I-1 indicate that the operating cost of the Individual Rights program over the budget and planning period will increase from \$68.3 million to \$69.3 million.

TABLE I-1

INVESTMENT AND OPERATING COSTS

INDIVIDUAL RIGHTS

		F i s c a l Y e a r s							
		Actual	Est.	Rec.	Rec.	P r o j e c t e d			
		<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>
A.	<u>Costs of the Recommended</u> <u>Program</u> ^{A/}								
	Operating	56.0	67.8	68.3	69.3	68.7	68.7	68.7	68.7
	Total	56.0	67.8	68.3	69.3	68.7	68.7	68.7	68.7

A/ Expenditures in millions of dollars from all funds.

II. COSTS AND EFFECTIVENESS OF THE RECOMMENDED PROGRAMS

This section discusses the activities, costs and effectiveness of the major Level II programs which constitute the Individual Rights program.

PROTECTION OF THE CONSUMER

The objective of the Level II program, Protection of the Consumer, is to ensure that the individual is provided with services and products that meet acceptable standards of quality, dependability and safety by adoption and enforcement of appropriate laws, rules and regulations, and through educational programs.

There are 11 lowest-level programs directed at protection of the consumer. The departments involved and the number of programs for each department are as follows: DOA (1); DCCA (9); and B&F (1).

The major activities that fall under the Level II program under DOA include the following: inspections to ensure wholesomeness of meat, poultry and meat food products; and enforcement of measurement standards related to petroleum products, packaging and labeling, and weights and measure to ensure that the public is receiving the specified product in the specified measurement. In addition, businesses engaged in installation and repair of commercially used measuring devices are registered and monitored to ensure adherence to specified standards. In a similar manner, businesses engaged in performing bulk measurement are tested and licensed to ensure correct measurement in the marketplace. DOA also houses the State's metrology laboratory that maintains the State standards of mass length and volume. This laboratory provides calibration and testing services to private industry and other governmental agencies.

DCCA manages programs to ensure that consumers are provided services by insurance companies, financial institutions, telephone companies, cable television companies, common carriers of property and passengers, and electric, gas and water companies which meet acceptable standards of quality, dependability and safety at fair rates. Financial institutions and insurance companies are also monitored to ensure that acceptable standards are maintained for safety, soundness and solvency. Professional and vocational services groups are licensed and regulated to ensure that acceptable standards of practice can be met. Securities and franchise offerings are registered to ensure that proper disclosures are made, while sales are regulated to ensure customer protection. DCCA's Office of Consumer Protection takes action to promote and maintain a fair marketplace for consumers. It also investigates complaints registered by consumers against those

businesses and industries which are non-regulated, and if necessary, the office initiates court action against violators. DCCA provides consumer complaints handling for activities of regulated professions and vocations through its Regulated Industries Complaints Office (RICO) and Hearings Office. In addition to complaints handling, the RICO provides specialized staff support to DCCA's Licensing Division and boards in complaint investigation and resolution. The Hearings Office provides specialized staff support to all divisions and boards by conducting hearings, as required, to ensure impartial and informal treatment in resolving consumer complaints.

The Public Utilities Commission, which is attached to B&F for administrative purposes, is the program responsible for regulating all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telecommunication, private water and sewage, and motor and water carrier transportation services in the State. It also oversees the administration of a one call center that provides advance warning to excavators of the location of subsurface installations in the area of an excavation in order to protect those installations from damage. In addition, the Commission has recently been tasked with the development and maintenance of the petroleum industry monitoring, analysis and reporting program that is intended to increase transparency within the petroleum industry. The Commission is statutorily provided with quasi-judicial authority to establish and enforce administrative rules and regulations, and set policies and standards. The primary objective of the Commission is to ensure that regulated companies efficiently and safely provide their customers with adequate and reliable services at just and reasonable rates, while providing regulated companies with a fair rate opportunity to earn a reasonable rate of return.

The area of consumer protection has a number of federal programs that support objectives of this program and relate in a cooperative manner with many State programs. Federal agencies (such as the President's Office of Consumer Affairs, Federal Trade Commission, General Services Administration's Consumer Protection Information Center, Consumer Product Safety Commission, U.S. Customs Office and U.S. Postal Inspectors Office) are all concerned with new federal laws that may be required to stop unfair or deceptive business practices. These agencies also promote general education of the consumer.

The Food Safety and Inspection Service of the U.S. Department of Agriculture is concerned with wholesomeness and correct labeling of meat and poultry products that a consumer purchases and ascertains that such products are unadulterated. The Food and Drug Administration is concerned with the safety, purity and wholesomeness of foods and drugs. The National Bureau of Standards of the Department of Commerce establishes basic standards for weights and measures and quality of materials.

The American Society for Testing and Materials provides standards relating to petroleum products.

In regulation of public utilities, federal agencies (such as the Federal Power Commission, Interstate Commerce Commission, Federal Communications Commission and Federal Maritime Commission) have regulatory interests similar to those of the State.

Factors that influence the overall direction of the Protection of the Consumer program vary widely in scope and are complex in their effects on the consumer. An example is lowering of the age of majority which brought an influx of unsophisticated young buyers into the marketplace. This type of problem is generally not the sole responsibility of any one State program but may depend for its resolution or implementation on many agencies of the federal, State and county governments.

Federal consumer protection programs have been significantly reduced in recent years. If this trend continues, the burden will fall upon State agencies to address and handle consumer complaints and issues which have previously been within the primary or exclusive enforcement jurisdiction of federal agencies.

In Hawaii, the workload of State consumer agencies may increase due to various factors including continuing trends toward deregulation on the federal level and increased awareness on the part of Hawaii consumers of the existence of State agencies which handle consumer complaints and of their rights in the marketplace.

The eight-year costs for the Protection of Consumer programs are shown on Table II-1. Operating costs increase from \$43.3 million in FY 06 to \$54.9 million in FY 13. The operating cost of the Protection of the Consumer programs over the six-year budget and planning period is about 80% of the funds allocated for the entire Individual Rights program during that period.

TABLE II-1
INVESTMENT AND OPERATING COSTS
AND
MEASURES OF EFFECTIVENESS/ACTIVITY
PROTECTION OF THE CONSUMER

		F i s c a l Y e a r s						
		Actual 2005-06	Est. 2006-07	Rec. 2007-08	Rec. 2008-09	2009-10	P r o j e c t e d	
						2010-11	2011-12	2012-13
A.	<u>Costs of the Recommended Program^{A/}</u>							
	Operating	43.3	54.7	54.3	55.5	54.9	54.9	54.9
	Total	43.3	54.7	54.3	55.5	54.9	54.9	54.9
B.	<u>Selected Measures of Effectiveness/Activity</u>							
	Percent of insurer's exam workload complete at least once in five years.	100	100	100	100	100	100	100
	Percent of institutions examined in a timely manner pursuant to statutory rules.	92	89	95	95	95	95	95
	Percent of complaints resolved within 90 days.	97	97	97	97	97	97	97

A/ Expenditures in millions of dollars from all funds.

ENFORCEMENT OF INFORMATION PRACTICES

The objective of the Level II program, Enforcement of Information Practices, is to implement and oversee compliance with the UIPA (Modified), Chapter 92F, HRS, and the open meetings law ("Sunshine Law"), Part I of Chapter 92, HRS.

The OIP is charged with protecting the public's right to know and to participate in and scrutinize government. Its activities include ensuring that the public has access to government records; personal privacy interests are balanced and, where appropriate, protected from disclosure; government is accountable in its collection, maintenance, use and disclosure of records; and discussions, deliberations, decisions and actions of government boards, at both the State and county levels, are conducted as openly as possible.

The eight-year cost projections for this Level II program are shown on Table II-2. The cost of the Enforcement of Information Practices program remains relatively stable averaging approximately \$0.4 million from FY 07 to FY 13.

TABLE II-2
INVESTMENT AND OPERATING COSTS
ENFORCEMENT OF INFORMATION PRACTICES

		F i s c a l Y e a r s							
		Actual	Est.	Rec.	Rec.	P r o j e c t e d			
		<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>
A.	<u>Costs of the Recommended</u> <u>Program^{A/}</u>								
	Capital Investment	...	...	...	...	...	...	...	...
	Operating	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
	Total	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4

A/ Expenditures in millions of dollars from all funds.

LEGAL AND JUDICIAL PROTECTION OF RIGHTS

The objective of the Level II program, Legal and Judicial Protection of Rights, is to ensure that the individual is afforded equal protection of legal and civil rights and interests by providing an equitable and prompt adjudication process.

There are three lowest-level programs directed at the Legal and Judicial Protection of Rights. The departments involved and the number of programs for each department are as follows: B&F (1); DLNR (1); and DHS (1).

The major activities that fall under this program include the following:

- The Public Defender program, which is administratively attached to B&F, provides comprehensive legal and related services for any person in the State who is without adequate financial resources and who is either arrested for or convicted of a crime punishable by imprisonment, or subject to family court action involving a potential loss of liberty, or threatened by confinement in any mental institution. This program provides services that are mandated by federal/State constitutions.
- The Bureau of Conveyances under DLNR protects the public by providing an accurate, timely and permanent system of registering and recording land titles and related documents and maps.
- The Commission on the Status of Women, which is administratively attached to DHS, advocate full and equal opportunity for women and girls by cooperating with other State and federal agencies in correcting discriminating practices and by recommending legislative and administrative action. The work of the Commission is largely based upon effective public/private partnerships and networking among a variety of boards, coalitions, and professional and community groups.

The eight-year cost projections for this Level II program are shown on Table II-3. The cost of the Legal and Judicial Protection of Rights Programs increases from \$12.3 million in FY 06 to \$13.4 million in FY 13.

TABLE II-3
INVESTMENT AND OPERATING COSTS
AND
MEASURES OF EFFECTIVENESS/ACTIVITY
LEGAL AND JUDICIAL PROTECTION OF RIGHTS

		F i s c a l Y e a r s						
		Actual 2005-06	Est. 2006-07	Rec. 2007-08	Rec. 2008-09	2009-10	P r o j e c t e d	
						2010-11	2011-12	2012-13
A.	<u>Costs of the Recommended Program^{A/}</u>							
	Capital Investment	...	...	...	...	...	...	...
	Operating	12.3	12.7	13.5	13.4	13.4	13.4	13.4
	Total	12.3	12.7	13.5	13.4	13.4	13.4	13.4
B.	<u>Selected Measures of Effectiveness/Activity</u>							
	Percent of attorney caseloads exceeding national standard for felony cases	...	5	5	5	5	5	5

A/ Expenditures in millions of dollars from all funds.

III. PROGRAM CHANGE RECOMMENDATIONS

There are no program change recommendations for the Individual Rights program.

IV. EMERGING CONDITIONS, TRENDS, AND ISSUES

Cable Television

New evolving technology has brought major changes to the cable industry, resulting in "blurring of the lines" between services offered by cable companies and telecommunications carriers. DCCA supports a truly competitive telecommunications marketplace that offers consumers a choice of vendors and competitively priced products and services.

Consumer Advocate for Communication, Utility and Transportation Services

Federal telecommunications law may undergo significant revisions in the upcoming Congress in an attempt to deal with emerging technologies (such as Voice over Internet Protocol (VoIP)) and their relationships to new and existing technologies, state/federal jurisdictional issues, and "public benefits" supported by traditional telecommunications rates such as universal service and emergency 911 services. Additionally, the Public Utilities Commission, under Act 94, SLH 2004, is reviewing alternative rate making structures to promote the development/implementation of renewable energy resources.

Financial Institution Services

The financial services industry continues to undergo phenomenal and accelerating changes in structure and diversity of its business models, delivery systems and products. DCCA finds itself involved in new areas such as bank secrecy and money laundering, money transmitters, and fair lending and real estate settlement procedures. Reductions in federal regulatory program commitments are also shifting a greater portion of the local examination and regulation process to DCCA.

Insurance Regulatory Services

DCCA is reviewing and, where appropriate, proposing legislation affecting insurers' market conduct, uniform regulatory standards, licensing of insurers and producers, life insurance, commercial and personal property and casualty insurance, surplus lines insurance, reinsurance, insurance fraud, insurance receiverships, financial surveillance of insurers, state and national insurance partnerships, and creating competitive insurance markets.

DCCA is also promoting Hawaii as a respected and sound domicile for captive insurers and a port-of-entry for alien insurers.

Professional and Vocational Licensing

Two conditions affect whether the program will encounter an increase or decrease in applications, new licenses and renewals. The first is the economic condition of the State. If the economy is good and interest rates are low, applications, new licenses and renewals for professionals who provide a service or commodity that consumers can now more easily acquire (i.e., real estate, construction) increase. The second condition is the current level of licensees in the State. A shortage of practitioners in any field ordinarily presages an increase in applications to practice in that field.

Office of Consumer Protection

The exponential growth of the Internet has transformed the commercial marketplace and the way in which government regulates it. The Internet has created enforcement challenges that were absent as recent as five years ago. Spam, phishing, and other forms of consumer fraud are now widespread.

Business Registration

A robust economy with increased investment activity will result in a higher number of business registrations, increased demand for public access to the registry, and a greater demand for assistance with registration and licensing. The sophistication and complexity of securities cases have been increasing each year due to proliferation of information and ease of communication over the Internet. The ease of communication has also increased the speed with which fraud can escalate within a community creating an increased demand for public investor education.

Regulated Industries Complaint's Office

Continued expansion of online commerce will increase interactions between Hawaii residents and out-of-state businesses. DCCA will be faced with logistical and legal challenges as it deals with inter-state licensing issues.

Statutory changes in subject matter areas of the Hearings Office's jurisdiction can cause a significant increase or decrease in number of cases filed with the Hearings Office. For example, the Condominium Dispute Resolution Pilot Program has the potential to significantly expand the scope of the Hearings Office's jurisdiction in areas related to condominiums.

Public Utilities Commission

In addition to regulating new industries, the Commission will be impacted by national and state trends toward increasing competition in the telecommunications and energy industries. The Commission is monitoring actions taken at the federal and state regulatory levels relating to VoIP, which allows for telephone calls to be made using a broadband Internet connection, and whether VoIP services should be classified as a "telecommunications" or "information" services under the Telecommunications Act of 1996 is pending resolution by the FCC. Additionally, the telecommunications industry, market, and technologies are changing at an accelerating pace. The Commission continues to monitor issues (e.g., infrastructure requirements necessary to support the introduction, deployment, and use of advanced communications technologies and services) relating to the impending rewrite of the federal Telecommunications Act of 1996. These issues will require immediate Commission attention and action so that competitors are motivated by appropriate market signals to seek entry into the local market and compete effectively for Hawaii's consumers, and wireless and wireline telecommunications technologies are encouraged to develop and innovate, while existing networks and infrastructure are adequately maintained and operated.

Similar to the national trend toward competition in the telecommunications industry, there have been efforts to introduce and expand competition within the electric industry on the federal and State levels. As a result of this trend, the Commission continues to take actions, such as opening investigative Docket No. 2006-0084 in April 2006, Instituting a Proceeding Under Hawaii's Net Energy Metering Law and monitoring developments at the federal and State regulatory levels relating to Broadband Over Powerlines (BPL), which provides access to high-speed broadband services using the communication capabilities of our nation's power grid. With the recent adoption of rules by the FCC to provide a framework that will both facilitate the rapid introduction and development of BPL systems while also protecting licensed radio services from harmful interference, regulatory uncertainties will hopefully be removed.

Other trends in the energy sector include federal, State and local programs and policies intended to reduce the dependence on foreign oil and to develop and promote energy efficient technologies for buildings, homes, and power systems. Initiatives supporting the development and utilization of additional and new renewable energy sources have increased on the national and state levels, including State legislation that, among other things, requires the development and implementation of Renewable Portfolio Standards (RPS) and a utility ratemaking structure that may include, but is not limited to, performance-based ratemaking. The Commission has

begun to implement the provisions set forth in Act 95, SLH 2004, and Act 162, SLH 2006, relating to RPS, in order to encourage and promote the increased use of renewable energy resources in Hawaii. Further, the Commission anticipates that many regulatory issues affecting these trends will be addressed in its forthcoming adjudicatory and rulemaking proceedings.

With the continuous evolution of utility regulatory environments and the constant expansion and development of new technologies and services in regulated industries, the Commission needs to be equipped with the resources and expertise necessary to satisfactorily meet its objectives. The Commission must balance the needs of the consumers and the financial viability of the companies in regulated markets at any given time and be able to respond to all applications, tariffs, complaints and inquiries that are received from the regulated entities, stakeholders and general public.

Public Meetings

The Sunshine Law was enacted in 1975, and over the years, changes have been grafted onto the statute. Both the public and government boards have expressed the need for greater change, particularly to address application of the Sunshine Law to circumstances that may not have been contemplated at the time that the statute was enacted or to amend the law where legal interpretation is believed to hinder openness or unnecessarily hamper the efficiency or efficacy of boards. OIP believes that the Legislature should consider directing an overall review of the Sunshine Law, involving representatives of the public, the media, government boards and agencies and OIP. Review of the entire statute will allow use of our gained collective experience with its provisions to finely tune a "workable scheme that encompasses, balances, and appropriately protects all interests, while placing primary emphasis on the most responsible disclosure possible."

V. SELECTED PROBLEMS FOR POSSIBLE STUDY

In the previous section, background information was presented on a number of problems and issues in the Individual Rights program. The study of these problems and issues should lead to alternative courses of action that will significantly increase the effectiveness of the program.